STATE OF MICHIGAN

COURT OF APPEALS

In re: Public Act 619 of the Public Acts of 2002, MCL 333.22201, *et seq*.

BOTSFORD GENERAL HOSPITAL, a Michigan nonprofit corporation; TRINITY HEALTH-MICHIGAN, a Michigan nonprofit corporation; COVENANT MEDICAL CENTER, INC., a Michigan nonprofit corporation; WILLIAM BEAUMONT HOSPITAL, a Michigan nonprofit corporation; MOUNT CLEMENS GENERAL HOSPITAL, INC, a Michigan nonprofit corporation; MARIANNE SIMANCEK, JUDITH LEE O'CONNOR, and MARGARET ANN REIHMER, in their individual capacities,

Plaintiff-Appellants,

v

STATE OF MICHIGAN; MICHIGAN DEPARTMENT OF COMMUNITY HEALTH; MICHIGAN DEPARTMENT OF CONSUMER & INDUSTRY SERVICES; Departments of the Executive Branch of the Government of the State of Michigan; HENRY FORD HEALTH SYSTEMS, d/b/a Henry Ford Medical Center—West Bloomfield, a Michigan nonprofit corporation; PROVIDENCE HOSPITAL AND MEDICAL CENTERS, INC., a Michigan nonprofit corporation; and ST. JOHN HEALTH, a Michigan nonprofit corporation,

Defendant-Appellees.

UNPUBLISHED
March 22, 2005

No. 257500
Ingham Circuit Court
LC No. 03-1045-CZ

Before: Talbot, P.J., and Gage and Murray, JJ.

PER CURIAM.

Plaintiffs Botsford General Hospital, Trinity-Health-Michigan, Covenant Medical Center, Inc., William Beaumont Hospital, Inc., Mount Clemens General Hospital, Inc., Marianne Simancek, Judith Lee O'Connor, and Margaret Ann Reihmer appeal as of right from an order of the circuit court dismissing their claims on the ground that plaintiffs lack standing. We affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

This case arose out the Department of Community Health's approval of defendant Henry Ford Health System's (HFHS) application to relocate two hundred[1] licensed hospital beds to its freestanding surgical outpatient facility (FSOF) in West Bloomfield and defendant Providence Hospital and Medical Centers, Inc., and St. John Health's (St. John/Providence)[2] application to relocate two hundred licensed hospital beds to its FSOF in Novi. Pursuant to MCL 333.22209(3)(b) the Department of Community Health approved defendants' applications without requiring either of them to first obtain a certificate of need (CON).

Plaintiffs Botsford General Hospital, Trinity-Health-Michigan, Covenant Medical Center, Inc., William Beaumont Hospital, Inc., and Mount Clemens General Hospital, Inc. ("hospital plaintiffs"), three of which had submitted applications for a CON to provide additional hospital beds in the same health service area as the hospital defendants at the time MCL 333.22209(3)(b) was passed, claim that MCL 333.22209(3)(b) is an unconstitutional delegation of legislative authority that deprived them of their statutory right to a comparative review of their CON applications. The hospital plaintiffs further claim that permitting the hospital defendants to relocate hospital beds without a CON, pursuant to MCL 333.22209(3)(b), will harm them economically. Marianne Simancek, Judith Lee O'Connor, and Margaret Ann Reihmer ("individual plaintiffs") joined in this suit, claiming that MCL 333.22209(3)(b) violates Const 1963, art IV, § 29, because it is special legislation that was passed without a two-thirds majority in each house of the Legislature and was not approved by voters in the districts affected.

The hospital plaintiffs and the individual plaintiffs jointly filed a complaint against the State of Michigan, the Michigan Department of Community Health, and the Michigan Department of Consumer and Industry Services ("state defendants"), and against the hospital defendants, seeking a declaratory judgment that MCL 333.22209(3)(b) is unconstitutional and injunctive relief permanently enjoining HFHS from taking any action pursuant to MCL 333.22209(3)(b). Plaintiffs now appeal as of right from an order of the trial court granting summary disposition in favor of all defendants on the ground that plaintiffs lack standing to bring their claims.

In 1972, the Legislature enacted 1972 PA 256, which established the CON program to deal with the uneven distribution of hospital services throughout the state and to improve access

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[1] HFHS requested to relocate three hundred beds, but the Department of Community Health "determined that a maximum of 200 licensed hospital beds can be relocated under MCL 333.22209(3)(b) without a certificate of need."

[2] Defendants HFHS and St. John/Providence will be collectively referred to as "the hospital defendants."

to health care services for Michigan citizens. The CON program was designed to control the costs of health care by requiring that any health care provider planning to construct new health facilities or add new beds to an existing facility first demonstrate a need for those new services in the targeted service area. *West Bloomfield Hosp v Certificate of Need Bd*, 452 Mich 515, 520; 550 NW2d 223 (1996). Under the CON program, certain proposals for new health care facilities are subject to comparative review, whereby applicants seeking to add new beds to a service area must submit applications to the CON Commission by a given date, the Commission compares the applications against each other, and issues a CON to the successful bidder. See MCL 333.22225; MCL 333.22229.

Supporting affidavits of defendants' pleadings indicate that the economics of providing health care services within the City of Detroit have proven increasingly difficult over the last twenty years, as evidenced by the fact that over twenty hospitals in Detroit have closed during that time. This is due in large part to the fact that over half of the patients in Detroit are either underinsured or completely uninsured. St. John/Providence and HFHS are two of the remaining few health care systems providing hospital services in the City of Detroit. Currently, St. John/Providence and HFHS each provide over $100 million in uncompensated health services in Detroit annually. The hospital defendants argue that the relocation of beds to western Oakland County, where the great majority of patients are insured, is necessary to defray the costs of providing services to uninsured patients and to keep their facilities in Detroit operating.

Defendants' pleadings further indicate that St. John/Providence operates a FSOF in Novi and HFHS operates a FSOF in West Bloomfield. A FSOF is, in essence, a "hospital without beds" because it already provides twenty-four hour emergency services and at least four other CON-approved services. HFHS has tried for a number of years to relocate some of its existing licensed hospital beds from Detroit to its FSOF in western Oakland County. However, the relocation of licensed hospital beds under the then-existing law required a CON. The Department of Community Health could not issue HFHS a CON because, under the standards developed by the Commission, the proposed relocations did not satisfy the bed-need regulations.

According to affidavits submitted with the hospital defendant's pleadings, in June 2002, HFHS learned that the CON Commission was considering rules that would allow plaintiff Beaumont to add beds to its hospital in Oakland County, which is in the same service area as the hospital defendants' Detroit hospitals and Oakland County FSOFs. HFHS petitioned the CON Commission to approve standards that would allow it to relocate existing beds to its FSOF in West Bloomfield, but the CON Commission declined. In the fall of 2002, the hospital defendants and others approached the Legislature, requesting that it address this issue to allow the hospital defendants to relocate existing beds to Oakland County. The legislature responded by passing 2002 PA 619, which was signed into law by the governor on December 27, 2002, and later codified at MCL 333.22209, to amend certain provisions of the CON program. Specifically, MCL 333.22209(3)(b) authorizes the CON Commission to approve the relocation of existing hospital beds from a hospital to a FSOF without a CON if certain conditions are met.

II. THE HOSPITAL PLAINTIFFS' STANDING

The hospital plaintiffs argue that MCL 333.22209(3)(b) is an unconstitutional delegation of legislative authority that deprived them of their statutory right to comparative review when applying for a certificate of need (CON) to provide additional hospital beds and, as a result, they

have been injured economically. They further claim that these injuries are concrete and particularized enough to support standing to sue. We disagree.

This Court reviews the issue of whether a party has standing de novo. *Nat'l Wildlife Federation v Cleveland Cliffs Iron Co*, 471 Mich 608, 612; 684 NW2d 800 (2004). Interpretation and application of a statute is reviewed de novo. *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29, 32; 658 NW2d 139 (2003). Constitutional issues, like questions of statutory construction, are reviewed de novo. *County of Wayne v Hathcock*, 471 Mich 445, 455; 684 NW2d 765 (2004). This Court also reviews a trial court's decision on summary disposition de novo. *DeShambo v Anderson*, 471 Mich 27, 31; 684 NW2d 332 (2004).

To satisfy the standing requirements, plaintiffs must have, at a minimum,

> suffered an "injury in fact"—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) "actual or imminent, not 'conjectural' or 'hypothetical.'" Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be "fairly . . . traceable to the challenged action of the defendant, and not . . . the result [of] the independent action of some third party not before the court." Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision." [*Lee v Macomb Co Bd of Comm'rs*, 464 Mich 726, 739; 629 NW2d 900 (2001), quoting *Lujan v Defenders of Wildlife*, 504 US 555, 560-561; 112 S Ct 2130; 119 L Ed 2d 351 (1992).]

The Court emphasized that the concept of standing arises from "concern with maintaining the separation of powers" and, specifically, "preventing the judiciary from usurping the powers of the political branches." *Id.* at 737.

The portions of MCL 333.22209 at issue here are subsections (3)(b) and (9), the text of which is as follows:

> (3) Subject to subsection (9) and if the relocation does not result in an increase of licensed beds within that health service area, a certificate of need is not required for any of the following:
>
> * * *
>
> (b) Subject to subsections (7) and (8), the physical relocation of licensed beds from a hospital licensed under part 215 to a freestanding surgical outpatient facility licensed under part 208 if that freestanding surgical outpatient facility satisfies each of the following criteria on December 2, 2002:
>
> (i) Is owned by, is under common control of, or has as a common parent the hospital seeking to relocate its licensed beds.
>
> (ii) Was licensed prior to January 1, 2002.

(iii) Provides 24-hour emergency care at that site.

(iv) Provides at least 4 different covered clinical services at that site.

* * *

(9) No licensed beds shall be physically relocated under subsection (3) if 7 or more members of the commission, after appointment and confirmation of the 6 additional commission members under section 22211 but before June 15, 2003, determine that relocation of licensed beds under subsection (3) may cause great harm and detriment to the access and delivery of health care to the public and the relocation of beds should not occur without a certificate of need. [MCL 333.22209(3)(b), (9).]

Subsection (3)(b), therefore, allowed defendants St. John/Providence and HFHS to relocate their existing hospital beds from their Detroit hospitals to their FSOFs in Novi and West Bloomfield, respectively, without a CON. Subsection (9) permitted the CON Commission to negate the subsection (3)(b) CON exemption if the following two conditions were met: (1) the six new CON Commission positions created by section 22211 all had to be appointed and confirmed, and (2) the thus fully constituted Commission had to have taken action under subsection (9) before June 15, 2003. One of the commissioners appointed under section 22211, however, could not be confirmed until after June 15, 2003, and therefore, the CON Commission could never take any official action under subsection (9).

The substance of the hospital plaintiffs' claim is that, in making subsection (3)(b) subject to the CON Commission's executive veto authorized by subsection (9), the Legislature unconstitutionally delegated legislative authority to the Commission. Before we may address the merits of plaintiffs' claim, however, plaintiffs must first satisfy the requirements of standing to challenge the constitutionality of the statute.

First, the hospital plaintiffs argue that subsection (3)(b) deprives them of their statutory "right" to comparative review, thereby creating a concrete and particularized injury to a protected interest. Yet, the hospital plaintiffs have not pointed to any statutory language expressly granting such a right. Rather, the hospital plaintiffs argue that MCL 333.22229(1) implicitly creates a statutory right to comparative review in health care providers that submit competing applications for a CON in a given service area. The text of MCL 333.22229(1) is as follows:

(1) The following proposed projects are subject to comparative review:

(a) Proposed projects specified as subject to comparative review in a certificate of need review standard.

(b) New beds in a health facility that is a hospital, hospital long-term care unit, or nursing home if there are multiple applications to meet the same need for projects that when combined, exceed the need of the planning area as determined by the applicable certificate of need review standards.

Although the hospital plaintiffs point out that the Michigan Department of Community Health's CON review standards for hospital beds, Section 1(1)(b), applies to "physically relocating hospital beds from one licensed site to another geographic location," 2004 MR 12, p 187, the Department's review standards do not vest any statutory right to comparative review in a health care provider that has submitted an application for a CON. Thus, the CON statute subjects certain projects to comparative review, but nowhere in the statute are hospitals with pending CON applications expressly granted any protected interest in comparative review. "This Court will read 'nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself.'" *City of Warren v Detroit*, 261 Mich App 165, 169; 680 NW2d 57 (2004) (citation omitted). There is simply no language in the statute to support the hospital plaintiffs' argument that the statue grants them a protected right to comparative review.

On the contrary, the Michigan Supreme Court recognized that the manifest intent of the Legislature in enacting the CON program is to "contain health care costs by eliminating the proliferation of unnecessary medical treatment facilities," *West Bloomfield Hosp, supra* at 520, not, as plaintiffs argue, to "encourage regulated competition." We agree with the trial court when it stated, "It is plain that the certificate of need (CON) program is intended to benefit the public, not any particular hospital, health facility[,] or individual voter." *Botsford General Hospital v Dep't of Community Health*, unpublished opinion of the Ingham Circuit Court, issued July 20, 2004, p 4 (Docket No. 03-1045-CZ). The hospital plaintiffs, therefore, have no legally protected interest in comparative review.

Second, with regard to the hospital plaintiffs' claim that subsection (3)(b) has injured them economically, this injury is too speculative to support standing. The hospital plaintiffs' argument assumes that all of the patients who would use the relocated hospital beds in western Oakland County would otherwise use plaintiffs' hospital beds, as opposed to using hospital beds in other areas like Ann Arbor, where many western Oakland County patients currently go for treatment. The hospital plaintiffs' argument also ignores the fact that patients choose hospitals based on the quality of care they provide as well as geographic proximity. Under the CON statute, the hospital defendants are simply relocating existing beds from one part of the health care service area to another, not creating a net addition of beds. Thus, the hospital defendants' relocation of hospital beds under subsection (3)(b) would not create more competition for the hospital defendants, but rather, as the trial court determined, "fine tun[e] the geographical distribution of existing beds." The resultant cost to the hospital plaintiffs of allowing the hospital defendants to relocate hospital beds is, therefore, too speculative to support standing to sue.

Third, even if the hospital plaintiffs could point to an injury that is sufficiently concrete to support standing, such injury would not be "fairly traceable" to any of the named defendants. Rather, the injury would be the result of the Legislature's passage of MCL 333.22209(3)(b). In bringing this claim before the courts, the hospital plaintiffs, in essence, are asking the judiciary to overturn the Legislature's policy determination that the subsection (3)(b) CON exemption is an appropriate way of providing access to health care in both western Oakland County and in Detroit. In such instances, the standing requirements properly bar plaintiffs from bringing suit to "prevent[] the judiciary from usurping the powers of the political branches." *Lee, supra* at 737. The trial court did not err in determining that the hospital plaintiffs lack standing to sue.

Because we agree with the trial court's determination that the hospital plaintiffs lack standing to challenge the constitutionality of MCL 333.22209(3)(b), we do not address the merits of their claim that subsection (3)(b) unconstitutionally delegates legislative authority to the CON Commission through subsection (9). We do, however, note that because the Commission never took any action pursuant to subsection (9) and, because of the subsection's date restriction, never will, the allegedly unconstitutional delegation of legislative authority under subsection (3)(b) can never occur. The hospital plaintiffs' claim that subsection (3)(b) is an unconstitutional delegation of legislative authority is, therefore, moot. *City of Warren, supra* at 166 n 1 ("An issue is moot if an event has occurred that renders it impossible for the court, if it should decide in favor of the party, to grant relief.").

III. THE INDIVIDUAL PLAINTIFFS' STANDING

The individual plaintiffs argue that MCL 333.22209(3)(b) constitutes "special," or local, legislation that was passed in violation of Const 1963, art IV, § 29, because it passed without a two-thirds majority in each house of the Legislature and approval of the voters in the districts affected. As registered voters in the districts where the hospital beds at issue are currently located or where those beds are proposed to be moved to, the individual plaintiffs claim that loss of the right to approve MCL 333.22209(3)(b) by local referendum constitutes a concrete and particularized harm sufficient to support standing to sue. We disagree.

The individual plaintiffs' standing hinges, as a threshold matter, on whether MCL 333.22209(3)(b) constitutes general or special legislation. The Michigan Constitution, in relevant part, requires that "[n]o local or special act shall take effect until approved by two-thirds of the members elected to and serving in each house and by a majority of the electors voting thereon in the district affected." Const 1963, art IV, § 29. In support of their argument that subsection (3)(b) is special legislation, plaintiffs cite *Michigan v Wayne Co Clerk*, 466 Mich 640; 648 NW2d 202 (2002), and *Mulloy v Wayne Co Bd of Supervisors*, 246 Mich 632, 635; 225 NW 615 (1929). In both cases, the Court determined that statutes that applied only to cities or counties that attained a specified population before a given date constitute special legislation because the class becomes closed after the deadline and the law does not continue to apply to all cities or counties as they grow to meet the statute's population requirement. *Wayne Co Clerk, supra* at 643; *Mulloy, supra* at 639-640. Analogously, plaintiffs argue that because the subsection (3)(b) CON exemption only applies to hospitals that owned a FSOF that met all the subsection's criteria as of December 2, 2002, the subsection closed the class that is permitted to benefit from the CON exemption, and therefore, constitutes special legislation.

The legislation in the present case is distinguishable from the special or local legislation at issue in the cases relied upon by plaintiffs. In *Wayne Co Clerk, supra*, for example, the Court held that 2002 PA 432 was a local act because it could only, and did only, affect one city on one occasion. *Wayne Co Clerk*, *supra* at 643. The situation in the present case is to the contrary. Indeed, plaintiffs concede that the statute applies to at least one other entity not involved in this case, St. Mary's - Saginaw Inc., in addition to the defendants. Thus, the law was not passed for the exclusive situation of one entity, as in *Wayne Co Clerk*. Additionally, the relocation of hospital beds to western Oakland County would benefit patients in many areas, both in and outside of Oakland County.

Although "special" legislation has never been clearly defined either by the Michigan Constitution or by case law, the Supreme Court has given some insight regarding this determination. The Court has held, "We must consider 'the purposes sought to be accomplished by the law.' If we find 'those purposes are public purposes, if the work of the entity is a public work' then we should find [the statute] to be 'a constitutional exercise of legislative power' insofar as art 4, § 29 applies." *W A Foote Mem Hosp, Inc, v Kelley*, 390 Mich 193, 212; 211 NW2d 649 (1973) (citation omitted). Additionally, whether a statute is general or special legislation "does not depend upon the number of persons within the class it purports to regulate or upon the number without that class. It is a general act if it applies uniform rules of conduct for all those persons within the scope of its application." *Rohan v Detroit Racing Ass'n*, 314 Mich 326, 351; 22 NW2d 433, 442 (1946).

Furthermore, the Supreme Court has held that "matter[s] of health" are "question[s] of state-wide concern and in which the legislature has a large area of discretion." *Foote, supra* at 212, quoting *Ecorse v Peoples Community Hosp Auth*, 336 Mich 490, 502-503; 58 NW2d 159 (1953). In so holding, the Court echoed its century-old decision in *Davock v Moore*, 105 Mich 120; 63 NW 424 (1895), in which the Court stated, "The preservation of the public health is not a local purpose, and the consent of the locality is not material, where the function is a general or a public one." *Id.* at 133.

The subsection (3)(b) CON exemption serves the public purpose of ensuring access to health care for Michigan's citizens, which is a matter of statewide concern, and it applies uniformly to the class it purports to regulate – any hospital that met its criteria as of December 2, 2002. Construing subsection (3)(b) as "special" legislation would impinge on the legislature's policy determination of what is the best way of ensuring continued health care in the City of Detroit and providing increased health care access to western Oakland County, and therefore, should be disfavored.

Even if subsection (3)(b) is special legislation, it does not follow that the individual plaintiffs' alleged loss of their right to vote on the act is necessarily sufficient to confer standing to challenge it. Plaintiffs cite *Baker v Carr*, 369 US 186; 82 S Ct 691; 7 L Ed 2d 663 (1962), and *Fed Election Comm v Atkins*, 524 US 11; 118 S Ct 1777; 141 L Ed 2d 10 (1998), for the proposition that voters generally have standing to challenge the constitutionality of a statute to the extent that legislative action affects their constitutional right to vote, even though the injury may be abstract and widely shared. These cases, however, do not stand for the proposition that voters have standing in the absence of some particularized harm. *Baker* involved a claim that a representative appointment scheme gave voters in certain counties a disproportionately less weighted vote than voters in irrationally favored counties. *Baker, supra* at 207-208. By its very terms, such a claim alleges that the voters in the affected counties had an interest more particularized than voters across the rest of the state. *Atkins*, on the other hand, involved a portion of the Federal Election Campaign Act (FECA) that gave standing to anyone who believed a violation of the act occurred. The plaintiffs' standing in *Atkins* was based on the fact that they had requested information from the Federal Election Commission (FEC), which the FEC denied in alleged violation of the FECA, rather than on the plaintiffs' status as voters. *Atkins, supra* at 21.

Plaintiffs also cite *Kuhn v Secretary of State*, 228 Mich App 319; 579 NW2d 101 (1998), as the only Michigan precedent addressing voter standing when a constitutional right to vote is

infringed. In *Kuhn*, this Court held that an Oakland County judge had no standing to challenge a state statute that consolidated the Detroit Recorder's Court into the Wayne County Circuit Court, allegedly depriving the electorate of the opportunity to vote for the twenty-nine judicial seats in the Wayne Circuit Court in violation of Const 1963, art 6, § 12. *Id*. at 333. Plaintiffs point out that the Court's rationale for its holding was that Judge Kuhn was "neither a Wayne County resident, a voter registered in Wayne County, nor a potential candidate for one of those twenty-nine newly created judgeships." *Id*. Plaintiffs argue that this language implies that Judge Kuhn would have had standing if he were a registered voter in Wayne County, and by analogy, the individual plaintiffs in the present case should also have standing. Plaintiffs' argument, however, is undercut by *Anthony v Michigan*, 35 F Supp 2d 989, 1003 (ED Mich 1999), which held that voters did not have standing to challenge the exact law at issue in *Kuhn*.

Nothing in Const 1963, art 4, § 29, confers standing on voters who have not suffered a concrete and particularized injury. In other words, there is no suggestion that the rules of standing do not apply with equal force to claims of government infringement on the right to vote as they do to any other claim. The individual plaintiffs have not alleged that the power of their votes has been diminished vis-à-vis other voters throughout the state, as did the plaintiffs in *Baker, supra*. Nor did the individual plaintiffs point to a statutorily provided cause of action, as did the plaintiffs in *Atkins, supra*. The individual plaintiffs have not even alleged that the relocation of hospital beds under subsection (3)(b) will harm them in any way at all. Because the individual plaintiffs have not suffered any concrete and particularized harm, they lack standing even if subsection (3)(b) is "special" legislation.

IV. PLAINTIFFS' EQUAL PROTECTION CLAIM

Both the hospital plaintiffs and the individual plaintiffs argue that the trial court erred in dismissing the Equal Protection claim brought in Count III of their complaint despite the fact that plaintiffs only moved for summary disposition on Counts I and II. We disagree.

As explained in II and III, supra, plaintiffs do not have standing to bring their claims because they have not suffered any concrete and particularized injury; however, plaintiffs' Equal Protection claim would fail even if they had standing. First, this Court notes that plaintiffs bring this claim under the Equal Protection Clause of the Michigan Constitution. Const 1963, art 1, § 2. The Michigan Equal Protection Clause, however, provides no remedy itself, but rather, "expressly assigns the responsibility of implementation to the Legislature." *Lewis v State*, 464 Mich 781, 786; 629 NW2d 868 (2001). This means that plaintiffs had to cite some statute passed pursuant to the Equal Protection Clause (e.g., the Elliot-Larsen Civil Rights Act) to state a cause of action, not the Equal Protection Clause itself. Plaintiffs admit that defendant HFHS's motion for summary disposition tested their Equal Protection claim. Therefore, even if plaintiffs had standing, the trial court could have properly dismissed this claim under MCR 2.116(C)(8) (failure to state a claim on which relief can be granted).

Furthermore, plaintiffs' Equal Protection claim is without merit. Plaintiffs have failed to identify any suspect classification or fundamental right involved; therefore, subsection (3)(b) is subject to rational basis scrutiny, which requires only that the statute be rationally related to a legitimate government purpose. *Phillips v Mirac, Inc*, 470 Mich 415, 432-433; 685 NW2d 174 (2004). The distinction between requiring a CON for *adding* licensed hospital beds to a service area and not requiring a CON for merely *relocating* beds within the same service area is

rationally related to the legitimate government purpose of "contain[ing] health care costs by eliminating the proliferation of unnecessary treatment facilities." *West Bloomfield Hosp, supra* at 520. Therefore, subsection (3)(b) passes Equal Protection Clause scrutiny.

IV. CONCLUSION

Neither the hospital plaintiffs nor the individual plaintiffs have alleged concrete and particularized harm sufficient to support standing to sue. The trial court did not err in determining that MCL 333.22209(3)(b) is not special legislation or in dismissing plaintiffs' Equal Protection claim.

Affirmed.

/s/ Michael J. Talbot
/s/ Hilda R. Gage
/s/ Christopher M. Murray